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(1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

C.R. No. 194 Of 2004.

APPLICANT
DEFENDANT

L.M. Pandey, son of Late M.M. Pandey aged about 51 years, resident of Vaishali Nagar, Bhilai, Tahsil and District Durg (Chhattisgarh)

V E R S U S

NON-APPLICANTS
PLAINTIFFS

R 1. Prem Singh Chouhan, son of Late Dharm Singh Chouhan, aged about 63 years,

R 2. Smt. Brajesh Chouhan, wife of Prem Singh Chouhan, aged about 62 years,

Both resident of Station Road, Durg, Tahsil and District Durg (Chhattisgarh)

P.R. No. 2319/04
Presented by Shri M.B. Dawani
dated 12/11/04

CIVIL REVISION UNDER SECTION 115 OF CODE OF CIVIL PROCEDURE

Amended as per C.O. dated 7.2.05
PANDAS AGRAWAL

XI-HC-22

(87)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.R.194/04 सन् ~~200~~

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11/03/2005

Shri Uttam Pandey counsel for the applicant.

Shri H.B. Agrawal learned Sr. Counsel with Smt. Usha Chandrakar for the respondent.

Heard.

This revision has been filed by the applicant under Section 115 of CPC against the order dated 17/08/2004 passed by Additional District Judge, Durg in Civil Suit No. 6-B/2002 by which the application filed by the applicant under Order 12 Rule 6 of CPC has been dismissed.

Learned counsel for the applicant submits that the applicant moved an application under Order 12 Rule 6 of CPC of Annexure – F on the ground that parties had entered into a compromise and on the basis of compromise an application of Annexure-A dated 09/01/2003 was filed in the High Court in M.A. No. 787/2001. By this application the parties agreed to compromise the suit on the condition that a sum of Rs. 6,00,000/- paid on 29/09/2000, Rs. 2,00,000/- on 04/11/2000 and Rs. 1,00,000/- on 21/11/2000 would be returned by the defendant to the plaintiff with interest at the rate of 13 % per annum from the date of receipt till payment and on the basis of this application this Court vide order dated 21/01/2003 passed in M.A. No. 787/2001 directed the parties to approach Lok Adalat for amicable settlement expeditiously. It is further submitted by the applicant that as per the terms of the compromise the applicant deposited Rs. 9,00,000/- and 3,00,000/- respectively on 17/07/2003 before

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आदेश पत्रक

मामला क्रमांक C.R. 194/04 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the trial Court and the non-applicant filed an application dated 26/07/2003 for withdrawal of the amount and even after the objection by the applicant the trial Court permitted the plaintiff to withdraw the amount deposited by the applicant though the same has not been withdrawn. Thus, the aforesaid conduct amounts to admission of the plaintiff and the Court below ought to have allowed the application of the defendant and dismissed the suit of the plaintiff. However, by the impugned order, the Court recording a finding that in the absence of any counter claim by the defendant no issue has been framed and therefore, the question of admission does not arise and in the absence of the counter claim of the defendant, no judgment under Order 12 rule 6 of CPC can be passed against the plaintiff.

Heard counsel for the parties.

By this Court, the parties were directed to approach the Lok Adalat in the light of the compromise and the matter was to be compounded in the Lok Adalat. However, there is no material available on record by which it can be said that the parties have compromised the dispute as per the application of compromise as per Annexure-A and further that in the suit pending before the trial Court the defendant has not preferred any counter claim and therefore the question of admission by the plaintiff does not arise and the judgment under Order 12 Rule 6 of the CPC cannot be passed and the suit cannot be dismissed.

देखिये)

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आदेश पत्रक

मामला क्रमांक C.R. 194/04 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Thus, this Court is of the view that there is no illegality in the impugned order and the revision is liable to be dismissed and accordingly it is dismissed. Sd/- DHIRENDRA MISHRA Judge	

JYO

(पीछे देखिये)

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